Making the "System" Work in the Baltimore Criminal Justice System:
An Evaluation of Early Disposition Court

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Preface

In December 2001, the Baltimore Efficiency & Economy Foundation (BEEF), with funding from The Abell Foundation, contracted with CFAR to conduct an evaluation of the Baltimore City Early Disposition Court. The study was undertaken to provide a balanced review of the impact the Court is making on Baltimore's criminal justice system since its founding in August 2000. The research conducted is intended to be used to modify and fine tune Court operations and to coordinate the Court's objectives with those of other criminal courts. Such a review is important at this juncture so that immediate steps can be taken to ensure that it can operate at its maximum benefit to the public.

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Authors' Comments

This report was made possible through the cooperation of many dedicated people in the Baltimore criminal justice system who are working hard with colleagues from other agencies to address the huge challenges of managing overwhelming caseloads and administering justice in Baltimore City. We thank those with whom we spoke during the course of our efforts to understand the Baltimore justice system. Their candor and patience in explaining to us the intricacies of criminal justice in the city and their welcoming spirit toward outside scrutiny was essential to our work. This report will address many ways in which the Baltimore system needs improvement, but it should not go without saying that the most fundamental of all initiatives to strengthen the criminal justice system in Baltimore City is to support people who work day after day in the trenches and labor with colleagues in other agencies to find new and better ways to do justice more effectively and efficiently.

Executive Summary

Early Disposition Court, which has been in existence for about 18 months, is a special-arraignment docket[1] in District Court for defendants charged with relatively minor non-violent victimless crimes. The goal of ED Court is to dispose of cases at arraignment a few days after the arrest of the defendant (thus saving the time of police and prosecutors, as well as incarceration costs for unreleased defendants). A further assumption leading to the creation of ED Court is that a court system facing large criminal caseloads needs to develop means of concluding minor criminal charges expeditiously in order to concentrate appropriate attention and energy on major criminal activity in the city.

Data from several sources on the activity of the ED Court indicate very meager results to date—only 5.4% of all arrests reviewed by the State's Attorneys Office and 17% of ED Court eligible defendants have led to plea bargains, convictions or other dispositions. To focus on ED Court performance alone, however, is to miss the most significant elements of the ED Court story. ED Court is a symptom of larger forces and characteristics of the Baltimore criminal justice system that create challenges and obstacles to *any* effort to dispose of minor cases quickly.

One reason that ED Court does not see more cases resolved is that its docket is filled with more serious cases than was expected—often multiple offenders on probation for a conviction and facing drug related charges. The reason for the change in the nature of cases is the success of a change in the system that took place at about the same time as the origination of ED Court—the transfer of much of the charging function in Baltimore from the police to the State's Attorneys Office. In 2001 about 26% of all the arrests reviewed by prosecutors led to a decline to charge and about one-third of these "declinations" involved minor crimes like intoxication, loitering, public urination, etc. that prosecutors considered "abated by arrest."

[1] A docket is simply the schedule of cases for a given day. An arraignment is the first formal appearance before a judge at which a defendant is informed of the charges and his or her rights under the law. The defendant informs the court of his or her preliminary response to the charges.

Other reasons why early disposition is difficult to achieve in Baltimore include:

- Some proportion of cases wash out at subsequent trial dates because police officers fail to appear as witnesses, thus encouraging defendants to seek the advantage of delay.
- Removing the case to Circuit Court by praying a jury trial leads to plea bargains in Circuit Court is often more favorable than an early stage plea offer in District Court.[2]
- The inability to consolidate the violation of a probation proceeding with the current charge means defendants are typically unwilling to plead guilty to any charge that would lead to a subsequent violation of probation proceeding with uncertain results.
- Use of diversion and diversion resources are limited.

A number of efforts are already underway to resolve many of these obstacles to early disposition in the Baltimore system, and other efforts we would recommend include:

- The police department is making a concerted and well-designed set of efforts to reduce police failures to appear as witnesses in misdemeanor cases.
- The Baltimore Criminal Justice Coordinating Council has reviewed draft legislation that would enable prosecutors to charge defendants with crimes involving a sentence of less than 90 days, thus eliminating the right to pray for a jury trial in Circuit Court and reinforce the finality of District Court decisions. Such a change in the criminal statutes needs to be pursued vigorously and carefully through "summer study" sponsored by the General Assembly since it could have enormous positive impact, if enacted, on early disposition of minor crimes.
- District Court, in conjunction with the Public Defender whose eligibility policies lead to some delay, needs to schedule first trials of cases at an early date and take strong steps to prevent postponements. We recommend that the ED arraignment system be expanded to other segments of the District Court criminal docket.

In addition to these specific obstacles, larger "system" problems influence the ability of Baltimore to move more effectively to dispose of minor cases early in the criminal process. The various agencies of the system need to work together cooperatively to solve the challenges of high caseloads and operational issues between agencies. There is evidence of demoralization and distrust in the current system, a quickness to blame other agencies or accede to obstacles all leading to lack of drive to overcome the normal difficulties inherent in making any change in a complex system made up of units with differing goals and organizational cultures.

Recommendations that address these larger issues of building a degree of trust essential to problem solving in the system include:

- Ending the use of data as a weapon against other agencies through a variety of agreements with respect to advance notice, collaborative review of data and use of the Criminal Justice Coordinating Council as a means of publicizing and validating data about the system.

[2] District Court handles minor charges, while Circuit Court handles more serious charges. Because District Court does not currently hear jury trials, a party who is entitled to such a trial may have the case transferred to Circuit Court upon a timely request.

- Strong emphasis on data sharing among agencies in the system to improve the operations of the system and its management. The position of Chief Information Officer of the system would be a means to promote and advance data sharing. Migration of the State's Judicial Information System to a relational database system should be undertaken to address JIS's inadequacies as a management information system.
- Stronger management in the Criminal Justice Coordinating Council by the creation of an executive committee to support and direct the many constructive efforts underway to collaborate and develop solutions to emerging problems as well as to set overall goals and directions for the system as a whole.

Early Disposition Court is best seen as a pilot program that reveals important lessons about the ability of the Baltimore criminal justice system to succeed in a broad-based effort to conclude minor criminal cases expeditiously and responsibly in District Court. No early-disposition initiatives will be successful in Baltimore unless there are concerted efforts to approach disposition of minor cases *systemically*. The approximately $4.7 million first committed by the Governor and General Assembly to various criminal justice initiatives in Baltimore in the Supplemental Budget for FY2001 remains crucial funding essential to agencies engaged in early disposition efforts—the Baltimore SAO, the Office of Public Defender, the Criminal Justice Coordinating Council, District Court and the Department of Public Safety and Correctional Services.

The recommendations for action in this report include:

- Widening the use of arraignment in District Court
- Implementing strict policies against postponement in District Court
- Combining violation of probation decisions with current charges
- Reducing police failures to appear in minor cases
- Restraining the gamesmanship in the use of prayers for jury trials to avoid disposition at the District Court level

A variety of longer-term measures to support more trusting working relationships and advance sharing of data among the agencies of the system have application to larger categories of criminal charges than those currently selected for ED Court. What is needed in Baltimore is a concerted early disposition initiative that draws on the lessons of the ED Court experience and addresses existing and (the inevitable) future obstacles to adjudicating relatively minor criminal charges swiftly, fairly and with finality. For this reason, the attached report seeks to analyze the broader criminal justice system to support early disposition in Baltimore City.

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I. Examination of Early Disposition (ED) Court and Early Disposition of Minor Cases in Baltimore City

A. The ED Court

Early Disposition Court, an arraignment court in the District Court system, was initiated at Eastside Courthouse in August 2000 and expanded to Central Booking Intake Facility (CBIF) in October 2000 to include those defendants who have not been released on their own recognizance. ED Court is part of a larger early disposition program—including the Charging Function and Quality Case Review (QCR)[3] —that operates on a continuum to dispose of certain categories of misdemeanors well before trial dates that are targeted for scheduling approximately 30 – 45 days after arrest.

ED-eligible cases are non-violent, victimless misdemeanor charges, with the exception of specific enumerated offenses, and with the exception of certain types of cases that contain factual issues that make ED Court unsuitable. For example, controlled dangerous substance (CDS) charges are included unless there are factual issues for which the State's Attorneys Office (SAO) believes it necessary to keep co-defendants together.

Defendants at Eastside ED Court are those who are released on their own recognizance. Prosecutors make offers and, if accepted, the cases are resolved with a guilty plea or are referred for appropriate services, and defendants then have their cases nol prossed[4] upon completion of the agreed upon actions. Cases typically appear before the court within 24 hours, or one – three days after arrest. Cases at CBIF ED Court include those in which the defendant is being held on bail or has made bail and then is asked to return to CBIF to appear in the Part 40 Court (the court located in CBIF), which they rarely do. Cases at CBIF do not provide the possibility for diversion or community service.

B. Purpose of the Court

The ED Court was established with the purpose (variously described by people in the criminal justice system) of:

1. Decreasing the number of court appearances by police officers and saving the city millions of dollars in court-related police overtime.
2. Reducing the number of detainees in jail.
3. Decreasing the size of overcrowded dockets.
4. Providing prosecutors with more time to back-up enhanced plea offers in serious gun cases.
5. Providing the State of Maryland with a $12 million savings from the $19 million the State spends annually at CBIF to hold defendants whose cases end up with a stet, nol pros, dismissal, probation or suspended sentence.

[3] As discussed below, ED Court and QCR were merged at CBIF on February 27, 2002.

[4] A nol pross literally means that the state decides not to prosecute a defendant in a criminal case.

6. Freeing resources necessary for minor crimes to expand resources to effectively deal with serious cases.

C. Data on the Operation of ED Court[5]

1. ED Data—Central Booking Intake Facility (CBIF)

According to SAO data[6], ED – CBIF results were as follows for 2001:

TABLE 1 – ED/CBIF DATA

Total – 2001	**Number**	**Percent**
Guilty Plea	***579***	***13.0%***
Nol Pros/Stet	***286***	***6.4%***
Rejected	2397	53.8%
Failed to Appear	62	1.3%
Other	1132	25.4%[7]
Total	4459	100%
Total cases Disposed of	***865***	***19.4%***

[5] Data collection's current deficiencies pose a serious problem when trying to evaluate the efficacy of the systems we are evaluating. Except when otherwise mentioned, we have attempted to count data in terms of cases rather than people. As ED Court does not combine cases, the two have the same results. QCR consolidates cases so we have presented both cases and data. The SAO counts declinations as cases.

[6] We have also received Court Clerk and Public Defender data from the Office of Pretrial Detention and Services, Pretrial Detention and Services only tracked Court Clerk data for part of the year because of problems with data collection. Public Defender's data did not have complete information for non-PD clients. Nevertheless, PD and Clerk's data had total dispositions of 20% and 21.5%, respectively. This data is very similar to that of the SAO.

[7] According to the SAO, this 25.4% "Other" figure includes those defendants not transported to the court or in the hospital, as well as those for whom an offer was not ultimately made because: open warrants had not yet been served; a bench warrant existed for which the paperwork had not yet been obtained or other similar pending cases existed about which complete information had not yet been collected.

2. ED Data—Eastside

According to SAO data, ED – Eastside results were as follows for 2001:

TABLE 2 – ED/EASTSIDE DATA

Total – 2001	Number	Percent
Guilty Plea	***665***	***4.5%***
Accepted Community Service	***478***	***3.3%***
Accepted Diversion	***512***	***3.5%***
Nol Pros/Stet (legal)	***658***	***4.5%***
Rejected	10,029	68.2%
Failed to Appear	2144	14.6%
Other	221	1.5%
Total	14,707	100%
Total cases Disposed of	***2313***	***15.7%***

This data (contained in Table 2) closely parallels that provided by the District Court.[8] According to data provided by the Clerk's Office at Eastside, the percent of guilty pleas in the last 6 months of 2001 has dropped to 2.9% (from 4.4% over the entire year according to data provided by the Clerk), while the number of nol pross/stets dropped to 9.5% (from 10.9% over the entire year), suggesting that the Court's performance is deteriorating.[9]

A few things are clear from this data. First, Eastside has been less successful at obtaining early disposition than CBIF, even though CBIF does not offer community services or diversion as an option. The differences are even starker when comparing guilty pleas. Both the Public Defenders and State's Attorneys offices have estimated that only a few defendants have ever accepted actual jail time at Eastside. The divergent results are due to the fact that it is much more difficult to obtain a disposition—especially a guilty plea—from defendants who have been released on their own recognizance than for those being held in jail.

[8] Data provided by Alan Carreira, Chief Clerk at Eastside, were similar with 15.3% of cases being resolved. Mr. Carreira's data reports on nol pross and stets, but reports the cases somewhat differently. Cases receiving community service or diversion are reported in the postponed category and are then grouped as a nol pross/stet when the defendant completes the activity, whereas the SAO reports those who accepted community service and diversion, but do not then report on the actual nol prosses that have resulted. This total will be different than the number who accepted community service and diversion as some defendants fail to complete their community service or diversion. Differences in the actual numbers of cases—Mr. Carreira reported over 2,000 additional cases—are partially due to the fact that Mr. Carreira's data records the postponement and then counts the defendants again when he or she appears before the court.

[9] We make no assertions as to the statistical significance of these changes, but according to the same data, the percent of guilty pleas over the life of the ED Court at Eastside is 5.5%, so the reductions are at least anecdotally significant.

3. QCR Data

QCR was first established at CBIF in 1996. Prosecutors reviewed daily the list of defendants who have been incarcerated for at least three days. Plea offers were made in an arraignment-like proceeding in the CBIF courtroom within up to 14 days of arrest.

According to SAO data, QCR – CBIF results were as follows for 2001:

TABLE 3 – QCR DATA

Total – 2001	**Number**	**Percent**
# of Defendants incarcerated after 3 days	14,878	
# of Defendants to whom offers were made	2972	
# of offers rejected	1404	
# of Defendants bailing before court	202	
Defendants whose cases were resolved	***1366***	***9.2% (of total defendants incarcerated 3+ days)*** ***46.0% (of offers made)***
Total # of cases resolved	***2179***[10]	

The vast majority of the cases where no offers were made involved felonies (39.1%), domestic violence (14.1%), victim issues (14.6%), the defendant was bailed (13.6%), or the defendant was being held on a violation of probation (5%) or a circuit court case (10.7%).

The Criminal Justice Coordinating Council ED Workgroup recommended merging the ED Court and QCR arraignments, and this merger was carried out on February 27, 2002. This will shorten QCR's current docket time and lengthen the ED arraignment time to approximately seven days after arrest, but offers will be made within three days of arrest when possible.[11] The advantages of lengthening the time is that defendants are far less likely to be under the influence of drugs and more capable of assessing their options. Also, conviction and probation records can be assembled and pending cases and violation of probation consolidated to improve the comprehensiveness of the plea offer.

[10] Because QCR consolidates cases, many defendants had multiple cases resolved, thus making the total number of cases resolved much higher than the corresponding number of defendants whose cases were resolved.

[11] According to the SAO.

4. Charging Function

The charging function is not a courtroom process, but it makes up a large percentage of the early disposition of cases. Baltimore began an experiment shifting the charging function to the State's Attorneys Office in July 1999, and then moved the entire system (with the exception of traffic cases, bench warrants and arrest warrants, which are still not under the charging function) to this process in July 1, 2000. The State's Attorneys Office staffs the charging room 24 hours per day, seven days per week and decides whether cases should be charged, as well as what charge is appropriate.

Over the past year, 26 percent of cases that were reviewed by the State's Attorneys Office were disposed of through this process (see Table 4, below).[12] Cases reviewed by the SAO include warrantless criminal arrests, but exclude bench warrants, arrest warrants and traffic violations. A total of 17.3% of all arrests were declined (see Table 4, below), when comparing the number of dispositions to the total number of arrests entering the system.[13]

5. Total Early Dispositions

TABLE 4 – TOTAL EARLY DISPOSITIONS

Total early dispositions in 2001 were as follows:

	Number of Dispositions	**Based on arrests reviewed By SAO (59,400)**	**Based on total arrests (88,930)[14]**
ED Eastside	2313	3.9%	2.6%
ED – CBIF	865	1.5%	1.0%
QCR	2179	3.7%	2.5%
Declinations	15427	26.0%	17.3%
Total	***20784***	***35.0%***	***23.4%***

A total of 35% of misdemeanor arrests and charges that have been reviewed by the State's Attorneys Office were disposed of prior to trial through ED Court, QCR and the decision not to charge.

[12] According to data provided by the SAO.

[13] The number of total arrests was provided by the Division of Pretrial Detention and Services, while the other data was provided by the SAO. When relying exclusively on Pretrial Services data, 18.5% of cases were declined in 2001, as compared to our 17.3% figure based on this "combined" data.

[14] Until this point, those cases not subject to SAO review have not been eligible for ED Court. Since the merger of ED and QCR on February 27, 2002, such cases will be reviewed for eligibility at CBIF.

II. Why are the Results of ED so Meager?

By any measure, ED Court is not making a major contribution to the early disposition of cases (in only 3.6% of total arrests, 5.4% of cases reviewed by the State's Attorneys Office and 17% of cases where offers are made are total charges disposed of through this mechanism). The critical question to ask is why there are so few successful plea bargains at an arraignment stage in the District Court for minor non-violent, victimless crimes. The answers to that question suggest that even a more elaborately designed court such as the Community Court concept that ED Court displaced would have experienced similar frustrations of purpose. ED Court is a symptom of much more significant system-wide issues that negatively affect the ability to dispose of minor cases quickly.

In terms of fulfilling the various purposes attributed to it, the ED Court cannot be deemed a success at this early point in its development:

- *Decreasing police appearances in court trials.* Since an ED arraignment prevents relatively few court trials from being scheduled, the results appear to be negligible.
- *Reducing pre-trial detainees.* There has been minor impact through the ED work at CBIF. A total of 865 cases have been disposed of.[15]
- *Decreasing the size of overcrowded dockets.* Because of the low volume of cases disposed of, the results have been negligible.
- *More time to back-up enhanced plea offers in gun cases.* The Mayor presented data at the January CJCC meeting indicating some deterioration in guilty pleas and the length of sentences in gun cases. If there is a link between more effective early dispositions and more effective prosecution of gun cases, this data suggests ED Court is not positively impacting the effective disposition of gun cases.
- *$12 Million in savings at CBIF.* Nothing approaching these figures is plausible, in connection with the results mentioned above, for reducing pre-trial detainees.
- *Freeing resources necessary for prosecution of serious cases.* There is no evidence this is occurring. Besides, only 17% of SAO current professional staff are present at District Court[16], limiting the significance of a shift in resources if District Court prosecutors have reduced dockets through early disposition. Anecdotal evidence suggests that time to trial in serious cases is increasing and a case-flow analysis that measured both felony and misdemeanor cases indicates that the average days of pretrial incarceration for those not released on their own recognizance increased from 67.9 to 87.8 days from 1998 to 2000.[17]

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[15] An additional 2,179 cases have been disposed of through QCR, which reflects disposing of the cases of 1,366 defendants and thus reducing the pretrial population by this second figure. This point seems so obvious that we have not spent a considerable amount of time analyzing the volume of pretrial detainees and the resulting cost of maintaining them. We have not seen any data that actually captures the total capacity of CBIF or that charts daily head-counts.

[16] Thirty out of 175 Assistant State's Attorneys (excluding division chiefs) are placed in District Court (including those in the domestic violence unit).

[17] Faye Taxman, Ph.D. and Karl I. Moline, Esq., *Analysis of 2000/2001 Baltimore City Case Flow/Preliminary Analysis (Revised Jan. 15, 2002).* At the time of this report, the Circuit Court did not have reliable data on the time to trial and disposition, but expects, through the work of Jim Trexler, to have this data collection capacity in place sometime in March 2002 (see Section VI).

In examining the ED Court, we have taken the position that a responsible analysis must look beyond data confined to the caseload and production statistics of this court. To understand ED Court, we need to take into account the ways in which the entire criminal justice system encourages or discourages, implements or creates obstacles to a policy of expeditiously disposing of minor cases. There is widespread consensus among every element of the system (with perhaps the exception of defense lawyers) that speedy (and appropriate) disposition of minor cases is an important element in dealing with heavy volumes of arrest activity reaching the court system, as well as a means of giving primary attention to serious crime.

III. Systemic Obstacles to Early Disposition in Baltimore

A. The Shift in the Nature of Cases: The Effect of "Declinations"

1. Problem

The cases ED Court was intended to expedite (so called nuisance crimes like loitering, open container violations and urinating in public) are no longer in the court system in any great numbers. Police quality-of-life arrests have increased significantly, but a higher percentage of these are disposed of through "declinations" (failure to charge by the State's Attorneys Office) or are handled through the issuance of a citation by the Police department to appear in court.[18]

Of 26% of the arrests that the State's Attorneys Office reviewed in 2001—and 27.5% in the last 6 months of 2001—that resulted in declination[19], the State's Attorneys Office estimates that about two-thirds are a result of some defect of proof or process. Many of these fall into a category of cases inherently difficult to prove (e.g., consent searches), but some number of these defective arrests and documentations might decrease as the SAO continues to work on training with the Police Department. Roughly one-third of the total number of declinations fall into the category of "abated by arrest." The most frequent "abated by arrest" cases are open container violations, urinating in public and disorderly conduct. In these circumstances, the SAO makes a determination that the arrest itself was sufficient to discourage similar acts in the future and releases a defendant after the arrest provides an opportunity for the defendant to be fingerprinted and checked for warrants, etc.

2. Initiatives Underway to Deal with this Problem

An Eastside Subcommittee of the ED Workgroup of the Criminal Justice Coordinating Council (CJCC) has developed a plan to hear citation cases— initially

[18] According to data provided by Faye Taxman, Ph.D. and Karl I. Moline, Esq. in the *Analysis of 2000/2001 Baltimore City Case Flow/Prelimniary Analysis (Revised Jan. 15, 2002)*, disorderly conduct represented 5.8% of all bookings in 1998, but only 1.8% in 2001, while loitering went from 5.1% to 1.5%.

[19] Based on the SAO data presented in Table 4.

from Central District, which had 1,965 written citations in 2001[20] —in ED Court. These cases will be heard each morning at Eastside at 9 A.M., and the expectation is that the program will be expanded to other police districts that make extensive use of citations. Such a plan captures a category of cases for which ED was initially intended and frees District Court trial dockets. The primary advantage, however, is improvement in the quality of the disposition of citations through centralization of an improved community service process. A defendant will receive a nol pross with the completion of five hours of community service on the date of the hearing. Police officers need not appear, thus avoiding the high likelihood of police failures to appear (FTAs)[21] for these cases, as well as saving overtime costs and operational resources. As indicated in the report by the many references to their work, the ED Workgroup has made tremendous efforts to understand and work toward solving some of the complex problems associated with early disposition.

B. The "Porousness" of the System: Police Failure to Appear in Court

1. The Problem

Defendants know that there is a likelihood that their case will ultimately be dismissed if they can wait things out. In ED (non-victim) cases, a victim's testimony is not critical, so the main witness at subsequent court dates is the police officer. One factor in a defendants' decision not to take pleas is the likelihood that the case will be dismissed owing to the relatively high police failure to appear rate, at either the scheduled trial in District Court or a proceeding in Circuit Court to which the case is moved upon request for a jury trial.[22]

According to data provided by the Public Defender's Office to Pretrial Services, for example, 61% of ED cases that were not resolved at CBIF between October 2000 and May 2001 ultimately had a better outcome for defendants than the ED offer, while 21% had the same outcome and 18% had a worse outcome.[23] Defendants can request a jury trial or wait for a trial in District Court. Many observers have commented on a certain rigidity in Assistant State's Attorney's initial offers—some of which is due to inexperienced young prosecutors and some due to office policy. However, the more significant reality is that no matter what the State's Attorney charges or offers, if it involves any form of conviction or record, the public defender will advise defendants not to take the offer because of:

- The odds that the case will wash out at subsequent court dates.

[20] Data provided by the police department.

[21] Police failures to appear for citation cases reflect their own (justifiable, in our opinion) judgment that the offense was abated by the summons to appear in court).

[22] The police FTA issue appears only to apply to misdemeanors. It is our understanding that only negligible numbers of police FTAs affect gun cases and serious felonies.

[23] Data provided by Pretrial Services and reported as compiled by the Public Defender's Office (contained in the "Report on Implementing the Evolving Baltimore City Criminal Justice Reform Plan for the Period June 1, 2001 – August 31, 2001").

- The impact on a defendant's probation status (which will be described later).

2. Initiatives Underway to Deal with this Problem

The police department acknowledges the problem with officer FTA's and is aggressively pursuing solutions to the problem. According to data provided by the SAO which the police department has further researched, out of 833 FTA cases reviewed from January – July 2001, 47% of the officers did not receive the summons and some 40% of the cases were the fault of the officer.[24] The police department is responding to this issue by targeting a reduction in their FTA rates this year. Other initiatives are:

- The development of Matrix software that permits court and State's Attorney personnel access to police schedules so that court dates are set when the police witness is available.
- A police liaison program that stations officers in courthouses who contact officers on duty when their court appearance is necessary.
- An electronic notification system to alert officers and their supervisor of pending court appearances. This replaces the cumbersome and error-prone movement of paper summonses transferred and distributed (and often lost) to various operational units. The new system addresses the 47% of cases in which police officers fail to appear because no summons is received or is received late.
- Penalties for police officers who unjustifiably fail to appear.

C. The District Court Procedures do not Reinforce Swift and Final Resolutions of Issues for Many Defendants

1. Problem

Most knowledgeable observers estimate that at least 30 – 40% of all ED defendants are on probation.[25] The new charge for which they are being arraigned in ED Court constitutes an automatic violation of the defendant's probation. The high number of defendants already on probation is a heritage of traditional District Court practice, and probably some measure of the huge court caseloads and reluctance to overload detention centers and swamp the correctional system. Defendants are unlikely to accept any offer until they understand whether a plea of guilt will trigger further penalties through a violation of probation proceeding.

Some judges in District Court pursue relatively lenient postponement policies in District Court. Postponement exacerbates the "porousness" problem.

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[24] In a document submitted to the CJCC at the January 2001 meeting.

[25] The 30% figure was cited in the ED Workgroup's initial recommendations, but estimates have ranged between these figures for most people with whom we have talked.

2. Initiatives Underway to Deal with this Problem

The Eastside Subcommittee has endorsed measures to consolidate probation violations with new charges in arraignments at Eastside. Some judges strongly oppose relinquishing or delegating their authority as probation-sentencing judges to preside over the violation proceeding. Others view the delegation as crucial for the purpose of facilitating speedy dispositions. All acknowledge that hearing the new charge and the probation violation together facilitates a plea bargain. The District Court needs to test different ways to achieve consolidation in as high a proportion of cases as possible.

D. The System Offers Little in the Way of Diversion

1. Problem

A high proportion of individuals who appear before the ED Court suffer from drug addiction,[26] and regardless of the disposition, it is likely that those individuals will soon appear before the court again.[27] One account estimates that a minimum of an additional fifteen cases per week would be disposed of by agreement between the Public Defenders and States Attorneys office if appropriate diversion slots exist. In a five docket period between January 28 and February 12, 2002, 56 out of 610 defendants were eligible for diversion (9%), but only six slots were available during that period (10.7% of eligible cases).[28] This number includes only those cases that are currently within the District Attorney's allowable framework for acceptable cases, and may expand through the ED Workgroup's recommendation of expanded diversion policies.

2. Initiatives Underway to Deal with this Problem

The Eastside Subcommittee has recommended expanding the definition of diversion-eligible cases to allow for expanding stay of decisions for 90 days with a guaranteed nol pros at the end upon the successful completion of a drug treatment diversion regimen.[29] Currently, the defendants whom the State's Attorney typically considers eligible for diversion are first offenders and previous offenders who received probation before judgment for non-incarcerable offenses. The Subcommittee recommended

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[26] Between February 26 and March 30, 2001, a random sample of arrestees showed that 78% of men and 72% of women tested positive for a drug, 37% of men and 50% of women tested positive for two drugs and 36% of men and 57% of women tested positive for cocaine. See *Drug Use Patterns Among Baltimore City Arrestees: Findings from 2001 Santa, Eric D. Wish, Ph.D. et al. (Preliminary Findings 11/5/2001).*

[27] A 1999 study showed that of defendants arrested who were released on their own recognizance, there was a mean of four prior arrests and 30% had prior guilty findings. Of those held on bail, there was a mean of five prior arrests and 35% had prior guilty findings. See *Exploring 3 Decision Points: an Analysis of the Baltimore Pre-trial Release Process, Faye S. Taxman, Ph.D., et. al. (Dec. 1, 1999).*

[28] Eastside Subcommittee report (submitted by Judge Clyburn to Judge Mathews, February 22, 2002).

[29] These recommendations have been accepted by the ED Workgroup.

enlarging eligibility to include defendants with probation before judgment records for certain incarcerable offenses as well as prior incarcerable offenses (not necessarily probation before judgment) as long as those offenses occurred a significant[30] length of time before the current charge. Other recommendations include broadening eligibility by allowing flexibility for juvenile offenses for minor crimes and rescheduling cases to the ED Court when diversion slots are unavailable.[31]

The Promise and Uncertainties of Diversion of Defendants Facing Minor Charges

ED court has made virtually no use of drug treatment slots originally allocated by Baltimore Substance Abuse Systems [BSAS] to the Community Court or more recent drug treatment funds allocated to BSAS. Part of the reason is that much of the proposed clientele for the Community Court are, by virtue of SAO declining to charge, no longer in the system. Arrests for intoxication, public urination, loitering and the like are now more likely to be "abated by arrest." Another factor is that the SAO has very strict guidelines with respect to eligibility for diversion. Still another reason is that to link ED court with BSAS and the rigorous diagnostic testing that characterizes access to BSAS drug treatment slots via the "gatekeeper" function at Parole and Probation have been inconclusive. There is some question about the effectiveness of the minimum diversion that does occur.

The current system of recurrent arrests of a largely addicted population is followed by court proceedings that often lead to some form of dismissal, relatively small penalty or sentence of time served. It is a system that sometimes seems to involve little more than a process of hassling defendants. It is not decriminalization, but it is hard to avoid the conclusion that revolving hassles are ineffective deterrence of future criminal conduct. Diversion, in theory, offers the promise of finding a more effective way to address the underlying substance abuse problem, through treatment under threat of imposition of a sentence or revocation of probation if the defendant does not complete the program.

There are two ways to view defendants who have substance abuse problems and commit minor victimless crimes not involving violence:

- Given the scarce drug treatment resources available, the State must give higher priority to providing treatment to people engaged in more serious criminal conduct. People who commit minor crimes are not facing significant time in prison in any event, so the incentive to undergo treatment is limited.
- Substance abusers who have not been apprehended for violent crime may well offer more potential for treatment success.

We recognize that the first of these propositions is an entirely legitimate position of many State officials in a position to guide the allocation of treatment for substance abuse in connection with criminal sentencing. The only way to test whether the second of these propositions is valid is to structure—with the assistance of BSAS and the State Department of Public Safety and Correctional Services—a controlled and rigorous test of diversion of defendants with relatively minor criminal records.

E. More Favorable Results in Circuit Court

1. Problem

There is considerable evidence that once a defendant reaches Circuit Court the odds of a favorable result improve. For example, between January and May 2001, 67% of pleas in Circuit Court undercut the original ED offer.[32] On the other hand, some judges who preside in the three Circuit Court "misdemeanor courts" have developed a system for disposing of cases that is supportive of prosecutor or court decision making in District Court. They announce at the beginning of the session that they are inclined not to

[30] One suggestion has been a length of time of seven years.

[31] See id.

[32] Data provided by SAO. These figures from June – November, 2001 were: 92%, 69%, 69%, 73%, 62%, 63%.

accept pleas that call for penalties less than what was offered in District Court. They then conduct all negotiating openly so that defendants can see for themselves that the judge listens to arguments, treats defendants respectfully and announces a decision, all the while calling for a jury to be identified and brought to the courtroom later in the day. Why is it that these Circuit Court Judges are successful in clearing the day's docket, generally reinforcing District Court offers and avoiding being overwhelmed with jury trials?

The answer, we think, is a function of the way the entire system is a negotiation game. Virtually no prayers for jury trial come to trial in Circuit Court because the Circuit Court cannot handle a large volume of jury trials. The defendant threatens to burden the court with a jury trial in order to negotiate a more favorable outcome through a plea bargain. The prosecutor seeks to game the system as well, through increasing the penalties at each new stage in the process, in order to negotiate a more severe penalty for the defendant for burdening the system. The success of the judges who clear their Circuit Court misdemeanor dockets while upholding the plea offers made in District Court is that they recognize that unless they clearly establish negotiation guidelines and show their willingness to be open to changing their minds, the Court is at a disadvantage in the negotiation process. To the extent Circuit Court judges generate more favorable outcomes to defendants who pray a jury trial, they are inviting more and more of gamesmanship and inviting more misdemeanor cases into Circuit Court.

2. Initiatives Underway to Deal with this Problem

As a result of a shortage of judges at the Circuit Court level to handle serious felony cases and an increasing backlog and extended time to trial, the Chief Judge of the Court of Appeals has specially assigned District Court judges to hear misdemeanor prayers for jury trials arising from District Court beginning the first of March 2002.[33] It is our understanding that these judges will be advised about successful techniques to support District Court plea offers, thus reducing the possibility of Circuit Court offering more attractive dispositions than those in District Court at least during the period of this special assignment.

IV. Addressing Specific Structural Problems

The key to improving early disposition is to strengthen and reinforce District Court as a court of final disposition. Three misdemeanor courts in Circuit Court are handling requests for jury trials from District Court. The number of jury trial prayers has increased dramatically, burdening the Circuit Court and siphoning off judicial resources that could otherwise be

[33] Based on the last 6 months of 2001, 13.5% of the cases in which the defendants who rejected the SAO ultimately proceeded to Circuit Court. This percentage is even greater when only calculating those cases that were ready for trial upon reaching District Court, as some cases were FTA'd and others postponed (SAO).

devoted to felonies.[34] There are differing opinions about whether *first offer, best offer* is a program that should be pursued,[35] but all agree that the District Court must function effectively to play a meaningful role in the criminal justice process. We recommend multiple approaches that need—at all times—to be tested in terms of the pressures they impose on the system as a whole.

A. Create Crimes with Sanctions with a 90 Days Maximum Penalty

This recommendation to enact legislation with "limited penalty" offenses for assault, bad checks or theft under $100, credit card offenses and minor drug offenses was included in the Report of the Early Disposition Workgroup to the Baltimore City Criminal Justice Coordinating Counsel in December 2001. The purpose of this legislation is to constitutionalize the so-called "Gerstung Rule," an arrangement used years ago by which the judge, prosecutor and defense attorney could agree to try a case or enter a plea bargain in which the ultimate penalty did not exceed 90 days, which was held unconstitutional by the Court of Appeals of Maryland. Under Maryland law, a defendant is not entitled to a jury trial for any charge with a maximum penalty of less than 90 days. Enacting legislation that gives State's Attorneys the option of charging defendants with crimes that limit the penalties to 90 days would enable the State's Attorney to disallow the opportunity for a jury trial in those cases that frequently result in minor amounts of jail time regardless of the method of disposition. Such legislation, if enacted into law, would achieve the same results as the old Gerstung Rule and strengthen the ability of District Court judges in Baltimore to manage the caseload. Prosecutors and defense lawyers would be able to negotiate for a reasonable disposition rather than to allow the defendant to bypass the District Court altogether solely for tactical reasons.

The CJCC has expressed its support of these efforts (the Public Defender dissenting) to restore the practical impact of the Gerstung Rule. Effective legislation would have major implications in terms of strengthening early disposition and the finality of District Court decisions.[36] We strongly recommend that the General Assembly passes a more comprehensive "limited penalty" package and that a vigorous effort by members of the CJCC be made to support the legislation. The object of this legislation is to provide the SAO with the option of screening cases in order to charge offenses that do not qualify for a jury trial.

A "limited penalty" package is an appropriate subject for summer study under the auspices of the House Judiciary Committee and the Senate Judicial Proceedings Committee. Representatives from the Public Defender's, State's Attorney's and Attorney General's offices should be included in this study, so that amendments to Article 27—including drug

[34] The number of prayers for jury trials increased from 4,365 in FY 99 to 5,669 in FY 2000 (5,279 in FY 98 and 3,841 in FY 97), as reported in the Maryland Judiciary 1999-2000 Annual Report – the latest report available. See Section VII for a proposed measurement of success in reducing the burden on Circuit Court.

[35] For example, Public Defenders argue that the goal should be to construct fair offers at every stage rather than to coerce defendants through increasingly stiff penalties.

[36] The State's Attorneys Office has prepared draft legislation that includes certain drug offenses as limited penalties. HB668 and SB775 were submitted in the 2002 General Assembly to create crimes with statutory maximums of 90 days for theft, bad check and credit card crimes but were killed in committee. Without the inclusion of drug offenses, this legislation would have had little impact in Baltimore City.

offenses—can be thoroughly reviewed and drafted for submission to the 2003 General Assembly.

B. Policies to Reduce Postponements

The District Court bench must work together to reduce the number of postponements, a significant cause of police and other FTAs. In connection with this policy, we question the value of inflexible PD procedures at the District Court level requiring defendants to prove indigence, plus an additional ten full court days to prepare a case. In many cases, this policy ends either in a pro se trial or a postponement—neither one an attractive option. The goal should be to schedule trials in 30 days—and to reduce this figure to lower levels rather than settling on the 30-day figure as the norm. Public Defenders handle bail hearings and the ED Court as exceptions to their eligibility and ten-day policy, and extending these exceptions to other cases should have a positive impact on time-to-trial as well as postponements in District Court.[37] As illustrated in the budget in Section VII, the Office of the Public Defenders received significant resources for ED activities and increased responsibilities are appropriate.

C. FTAs

While we applaud the police department's plans to reduce FTAs over the next year, these initiatives should be closely monitored to make sure that they are achieving desired results. One of the characteristics of the Baltimore criminal justice system is to introduce initiatives and to declare a problem solved without closely monitoring it to ensure that intended results are being achieved.

[37] One suggestion made to us was that a small fund be established to reimburse the State for inadvertent legal services provided to individuals who are subsequently found to be non-eligible.

Difficulties of Making Change Work—Operational Details are All Important

Two FTA Examples:

1. The Matrix on-line software developed by the police department reveals police schedules indicating availability for trial—or at least shows days when the officer is unavailable due to training, vacation, reserve military service and the like. Like any software, it is a tool that depends on whether human users have the training, time and inclination to use it to its full potential. We have noticed instances when a trial scheduler first picks three potential trial dates, then consults Matrix and schedules the date Matrix shows police are available. However, if there is no availability for all three dates, the trial is scheduled without seeking additional dates through the use of Matrix—almost assuring a police failure to appear. Access to software does not assure its effectiveness. Careful delineation of the responsibility and protocol for software use is as important as the tool itself.
2. Another example is the police liaison officer stationed in the courthouse to contact a police officer in the field to appear in a trial. This program was designed to save significant police time that should be spent in patrol or investigative duties rather than waiting for a trial to commence. The liaison officer's job is to assure both prosecutor and defense lawyer that the testifying officer is available and on call if needed to testify. However, the program only works if the defense lawyer can trust the liaison officer's assurances. Once a defense lawyer tests the system and finds that a liaison officer cannot produce a promised witness, the liaison system become virtually useless. We have heard complaints that in some districts a very high proportion of police are called to trial and then never used as a witness because the public defender simply wants to see the officer present before entering into a plea—a result that only adds to police cynicism about the court process and encourages more police failures to appear. The training and supervision of liaison officers must underscore that the first priority of the position is to establish a genuine credibility if the program is to function properly. Also, refusal to use the liaison system by a defense attorney ought to be an occasion for a serious conversation between the police, prosecutor and defense attorney about the rationale for the program and ways to make it work effectively.

D. Diversion

It is important to utilize Eastside more effectively as a diversion resource. For example, the Disposition/Community Service location in the basement is on hold because of a lack of funds to adequately renovate the space.[38] The parties should proceed with the use of dividers or some other means to allow the use of the space "as is" until renovations can be carried out. Without moving forward with currently available resources and creative solutions, diversion efforts will remain stagnant.

Baltimore Substance Abuse Systems allocated $300,000 to provide for administrative costs related to substance-abuse assessments as well as implementing diversions. Over 400 new treatment slots were made available in FY 2001 with the understanding that ED Court would have access to many of these slots. Few of these resources have been used. We strongly recommend that some individual be given responsibility to work with BSAS to formulate a small experimental pilot program at Eastside, carefully and rigorously designed, to test whether substance abusers charged with minor crimes can be successfully diverted and treated.

Beyond the question of resources, there are clearly different beliefs about eligibility for such diversion. Public Defenders argue that there should be more flexibility in choosing candidates, while State's Attorneys respond that repeat offenders need increasing repercussions. The truth is probably somewhere in between the two positions, since it is

[38] Estimates place renovation costs at $750,000, while there is only $150,000 currently available for renovation.

well accepted that part of the course of treatment for drug offenders is relapse, while it is also clear that such offenders need the threat of sanction to take their treatment regimens seriously. While the ED Workgroup has formulated some workable compromises, this question will not become relevant until sufficient resources are first available for those individuals that both sides agree are appropriate candidates for alternative dispositions.

The State's Attorneys Office and Public Defender's Office should also facilitate an agreement about the particulars of assessments in the ED Court. For example, Public Defenders would be well advised to soften their position opposing pre-trial drug assessments[39] in exchange for more flexibility about how and to whom diversions are made available.

V. Systemic Issues That Affect the Ability to Resolve Problems Related to Criminal Justice in Baltimore

We have made a number of recommendations about implementing initiatives and practices that support early disposition and the crucial role of District Court in this process. More important than the particular merits or feasibility of these recommendations is the ongoing capacity of the system itself to identify challenges and to deal effectively with them.

Two Future Planning Issues in Early Disposition

1. If various measures are successful in supporting final disposition of minor cases in the District Court and reducing the extent of prayers for jury trials to Circuit Court, then it is entirely predictable that a second avenue for access to Circuit Court—now little used—will become the favorite device of defense lawyers. Maryland permits "appeal" from District Court to Circuit Court for a trial de novo—an entirely new trial before another judge. To the extent there is legislative authorization for charging crimes with penalties under 90 days, the trial de novo in Circuit Court for a limited penalty offense would be before a judge, which would detract from its bargaining attractiveness to a defense lawyer. Nevertheless, it is likely that trial de novo would become the next method used to undercut decision finality in the District Court.

   First, we believe trial de novo is an anachronism. No serious arguments from policy or principle can support the procedure of trials de novo in Maryland. Two-thirds of the 24 states that currently authorize some form of trial de novo have entry-level magistrates who are not required to be lawyers—a legitimate reason to maintain the right of a trial de novo before a legally trained judge.[40] However, many years ago, Maryland undertook major reform, organized the statewide District Court and abolished local magistrates. All District Court judges are lawyers, proceedings are recorded and appeal is available to an appellate court to correct trial court errors. In light of the huge caseloads now affecting the criminal justice system in Baltimore, the redundant trial de novo system—if its use grows to any degree—is enormously costly to the citizens of the State, wasteful of judicial resources and unnecessary for a sound system of justice.

   Assuming, however, that the reform of the trial de novo does not take place quickly or at all, advance planning of how to manage a significant increase in appeals for trial de novo from District Court would be an important planning and implementation effort for the Baltimore criminal justice system. In keeping with the thrust of this report, we would recommend that every legally available method to discourage and thwart trial de novo appeals should be deployed to minimize its effect on resolving misdemeanor cases.

2. Another area where some thoughtful planning might prove fruitful is to examine the pros and cons and management of significantly increasing the use of police citations for minor crimes. Police citations and the State's Attorney declining to file a charge following an arrest are both highly effective means of disposing of minor cases. We would recommend that regular reports be made to the CJCC on declination and citation

[39] As is done in Midtown Community Court in Manhattan. *See* Judith Kaye, *Changing Courts in Changing Times: the Need for a Fresh Lookat How Courts are Run*, 48 Hastings L. J. 851 (1997). Midtown Community Court is widely viewed as one of the leading examples of early disposition creativity in the court system.

[40] *See* David A. Harris, *Justice Rationed in the Pursuit of Efficiency: de Nova Trials in the Criminal Courts*, 24 Conn. L. Rev. 381 (1993).

activity—by category of criminal activity. Such information should stimulate more collaborative thinking to explore the relationship between the two, the appropriate law enforcement use of each mechanism and the differing effects of arrest and citation on District Court as well as defendants and those summoned to court on a citation.

How well prepared is the Baltimore criminal justice system to address new issues that arise in connection with early disposition and the urgent issues of major crime? In the course of this study we were struck by characteristics of the Baltimore criminal justice system that do not express themselves in numbers of cases, legal proceedings and processing of defendants but, nevertheless, may have significant impact on the ability of the system to respond to the challenges it faces. We spoke to everyone on condition of confidentiality and, in the process of give and take about ED Court and the issues it generates, we discovered a significant degree of demoralization in the system. One way to think about this is to acknowledge how understandable low morale is when the justice system is under stress. Police Commissioner Norris warned, when he assumed the leadership of the Baltimore Police Department, there would be a significant increase in arrest activity if the city was to make any progress in addressing its enormous problems of crime —particularly serious violent crime. True to his word, the 88,930 arrests in Baltimore in 2001 was an increase of over 8% from the previous year. There are indications that the increase in police activity is accelerating although the data is by no means conclusive. January 2002 arrests were 23% higher than for January 2001, which suggests that the figures for 2002 will put even further stress on the rest of the criminal justice system.

Stress, however, is not just a function of workload but of a sense of how the organization is responding and whether the tools and the problem-solving abilities of the organization are mobilized to address the challenge of increasing caseloads. Our impression is that people in the system are working hard to stay abreast of their huge workloads. Part of the problem is that the "system" of justice is a "system" only in concept. The various agencies in the system[41] have common goals in only two respects: operational goals of processing defendants to a disposition and substantive but highly general commitments to doing justice in the context of upholding our criminal laws. Each agency has its own specific responsibilities and tasks, its own governing structure, operating procedures and unique culture. It is hard work solving problems that require cross-agency commitments and the resolution of differing, sometimes conflicting, organizational interests.

[41] Our working list includes two levels of trial court, one State funded –District Court—and the other City funded—Circuit Court -- the State's Attorney for Baltimore, the Office of Public Defender, the Pretrial and Parole and Probation divisions of the State Department of Public Safety and Correctional Services, Baltimore Substance Abuse Systems, the Baltimore Police department and the Baltimore Mayor's Office.

In the face of this hard work made more difficult by huge caseloads, a number of indicators of demoralization emerge:

- A propensity to blame other agencies for problems.
- An inclination to declare an initiative ineffective on the basis of an anecdote or some figures that do not necessarily capture the nuances of the situation. When problems arise, which they inevitably do in collaborative (difficult) work across organizations, there does not appear to be much drive to work through and overcome problems.
- A tendency to claim success upon initiation of a program without careful follow-up and assessment to make sure the claims of progress are accurate.

One of the most demoralizing of all practices in the system is the sense that one's agency is victimized by another agency through the surprise release of data implicitly or explicitly critical of the organization. Public disclosure of information damaging to another agency requires the collaboration of the *Baltimore Sun* and other media to be successful, and it often leads to a summons to Annapolis for hearings by relevant committees of the General Assembly. The antidote to this practice is not secrecy or hiding problems from public disclosure or legislative inquiry—it is to create settings in which data that affect a number of different agencies can be shared, validated, analyzed and used to motivate collaborative problem solving and constructive action. Without such settings, the natural tendency of a demoralized system is to hunker down, avoid taking risks and protect the interests of one's own agency above those of system-wide needs.

VI. Recommendations Relating to System Initiatives

We recognize that the various agencies that make up the Baltimore criminal justice system are not now, nor will they ever be, one big happy family. These agencies have different missions, ideologies and methods of operating. They are rivals for city and (more often) state funding. They have their own interests to protect and perspectives to project to influence the larger system. To some extent, the criminal justice system is a framework for units to contest each other and for courts to resolve and interpret the arguments and data from various units within the system.

Despite all the contention among agencies within the system, each agency knows it has a certain dependency on the others in order to function effectively and that it must find ways to collaborate with other units to be successful. The primary way agencies collaborate in a system like this is to establish a mutually defined "safe zone." This safe zone is the tacit understanding by which two or more organizations define an area in which they can share information, trusting that they will negotiate their differences and arrive at a mutually satisfactory result for themselves and the system as a whole.

The level of distrust in the Baltimore criminal justice system is very high at the moment. We believe it would be enormously helpful to begin taking small steps to build trust within the system in the hope that small steps can lead to the creation of much larger "safe zones" that advance larger system interests. The small steps we have in mind may be viewed by some as giant steps. We are convinced that unless there are moves to build more trust in the system, it

will be difficult for the system to respond to the significant caseload pressures and understandable conflicts precipitated by more focused and intensive police activity in Baltimore.

We recommend:

- Ending the use of data as a weapon by the simple measure of complying with, and expanding, the procedures Judge Berger recommended at the November 2001 meeting of the Criminal Justice Coordinating Council relating to its workgroups and subcommittees. All data to be presented at the monthly CJCC meeting should be distributed to other members of the Council at least seven days in advance. If there is an understanding that such a distribution carries with it an embargo on comment relating to a pending press release until the date of the Council meeting, at least other agencies then have a chance to analyze the data and prepare any comments they deem appropriate.

- All data released by an agency that may be perceived as reflecting on the performance of another agency should be released at CJCC meetings according to the procedure outlined in paragraph 1.

- (A further extension of items 1 and 2) The Criminal Justice Coordinating Council should create a permanent subcommittee on data with representatives of each of the agencies represented on the Council. The role of this subcommittee would be to: (A) validate the reliability of data or initiatives submitted to it, including estimates of effectiveness or cost savings and (B) present such data and information to the Council and the public at large. The goal is to have the CJCC releasing data about system issues that reflect a well-considered, systemwide response about the validity of the data, the problems reflected in the data, and projections, if any, associated with initiatives to address these problems.

- The information technology project recently approved by the CJCC, if funded, will physically connect virtually all the agencies in the system with dedicated communication lines. The great opportunity and challenge now facing the Council is to develop data-sharing applications between agencies. For example, the Parole and Probation HATS system could provide invaluable information to courts, prosecutors and public defenders and possibly other agencies. From an early disposition perspective, HATS could greatly assist resolution of difficulties generated by the high proportion of probation violations now in the District Court. The sharing of forensic and investigatory reports between the police and SAO—much along the lines of the on-line system currently being developed for the sharing of chemical analyses—would support more efficient procedures.

  How much of one agency's information system is to be made available to other agencies and under what conditions are critical questions. We recommend the CJCC consider the creation of a Chief Information Officer (CIO) position for the system whose job would be to work with agencies to promote, plan and implement data sharing among agencies within the system. The position would require someone with a strong reputation for impartiality and considerable skill and experience working across agencies in complex systems. The types of difficult questions that need to be resolved include (other than access and security issues):

- What operational data is going to be helpful and actually put to use by another agency?
- What managerial data is appropriate (and what is inappropriate) to share with other agencies?

Another project of some urgency, in our opinion, is the need for the CJCC or its proposed CIO to urge and help implement the migration of the Judicial Information System (JIS) to a relational database system. JIS is by all accounts a highly reliable source of information about cases and court actions. What it simply cannot do is generate much in the way of management information on a timely basis. As a result of JIS's inadequacies, four different efforts have been launched in Baltimore to create "middleware" that takes JIS data and converts it to a format useful to managers:

- Prosecutor's Dialogue, software used for tracking Circuit Court activity by the State's Attorneys Office
- Management information software developed by Jim Trexler for the Circuit Court of Baltimore due to be operational in March 2002
- A State's Attorney ED Court tracking system
- A software project managed by Mike Simcock originally developed for the Community Court which is now available for implementation in the District Court

Middleware is expensive to develop and is ultimately limited by the questions current managers want to answer. Any system that requires the creation of other software for critical management information needs to be revisited. Both the police department and the State's Attorneys Office have used outside grant funding to
invest heavily in management information systems critical to their operations. JIS requires substantial investment if it is to be relevant to the kinds of system-management issues that are critical to Baltimore criminal justice issues.

- The several workgroups that have been established by the CJCC are a helpful and creative method to create settings, or safe zones, in which representatives of various agencies can work together to solve selected system problems. What is needed in addition to this structure is a more managerial structure for the CJCC—something like an executive committee to review subcommittee recommendations before they reach the CJCC. We would suggest an eight-person group comprised of the Circuit Administrative Judge, the Judge-in-Charge of Criminal Dockets of Circuit Court, the District Court Administrative Judge, the Commissioner of the Division of Pretrial Detention and Services, the Police Commissioner, the District Public Defender, the State's Attorney for Baltimore City and the Mayor of Baltimore City, or their designees with the authority to act for them. The executive committee would manage workgroup recommendations by endorsing them, modifying them or sending them back to the workgroups for further work. The executive committee could develop system goals and objectives each year and oversee and manage the work of the subcommittees to ensure that selected goals and problem areas were being addressed.

- We think it would be advisable to obtain help from city and state budget analysts to construct a comprehensive Baltimore City Criminal Justice System budget that includes the

total expenditures of relevant city agencies and the Baltimore-related expenses of State-wide criminal justice agencies. Such a budget would prove effective in identifying for the Governor and General Assembly the implications of new initiatives for the system as a whole.[42]

VII. Drawing lessons from the ED Court—Early Disposition Policy in the Baltimore System

One feature of ED court, we believe, deserves much broader application in District Court, namely the policy of arraigning all defendants before a judge. The arraignment process has one major advantage: a judicially advised defendant who does not obtain a lawyer for his or her first court hearing is in no position to ask for a postponement. Circuit Court judges will not proceed pro se without a warning by a judge about the right to an attorney, and many District Court judges follow a similar practice. An arraignment process will reduce the opportunity to use an appearance without an attorney as a stall tactic. Ultimately, the system will be served by presenting defendants with their charges and rights before a judge. We recognize that this would pose administrative challenges for District Court to implement, and it may be appropriate for phased implementation. It also might be appropriate to experiment with the use of Commissioners who arraign and advise defendants of their rights on the record, as is being initiated in Montgomery County. If an arraignment system in District Court can convince judges of that court to support a uniformly strong policy against postponements, we think the Court should seriously consider expanding the use of arraignment beyond ED court.

The array of initiatives described in this report -- wider use of arraignment, implementation of strict policies against postponement, combining violation of probation decisions with current charges, reduction in police failure to appear for minor cases and restraining the "gamesmanship" inherent in the prayer for jury trial--are all initiatives that should have positive effect on the entire District Court Criminal docket, not just the non-violent victimless crimes selected for the ED docket. If we think of the ED Court as a pilot program from which important lessons can be drawn about early disposition in general, ED court is an important initiative.

How then do we respond to the question of the cost of ED Court in view of the meager current production of that court? The Supplemental Budget in April of 2000 authorized expenditures of $4.579 million for "the Baltimore Criminal Justice Package." This included:

District Court personnel at CBIF	$401,306
Office of Public Defender for CBIF	$1,674, 095
CJCC	$250,000
Department of Public Safety and Correctional Services security personnel at CBIF	$523,226
Parole and Probation Intake Unit	$132,915
Parole and Probation Warrant Apprehension	$256,007

[42] The enormous difficulties we have had getting accurate budget data (see the footnote following) and the considerable amount of rumor and misinformation about budget matters we encountered in our work on this report are not insignificant factors in our making this recommendation.

Grant for the Baltimore State's Attorneys Office	$1,342,000

Much of this funding was not related to ED Court. The State's Attorneys Office funding was not for ED court purposes.[43] The Criminal Justice Coordinating Council funding was designed for development of a fiber optic "information system" in Baltimore—the first steps in connecting the various criminal justice agencies in the city. The Warrant apprehension and Parole and Probation Intake funding does not appear to be ED Court related. Thus, claims that the $4.579 million in FY2001 (increased, owing to personnel costs to approximately $4.7 million in FY 2003) is the funding for ED Court seem to us to be a misleading characterization of the State's investment in early disposition in Baltimore. Given the large systemic obstacles to the current ability of District Court to generate early dispositions at arraignment, the many initiatives now underway to address these obstacles, and the importance of early disposition to support the ability of agencies to attend to serious predatory crime in Baltimore, we think it would be a mistake to withdraw or significantly reduce these funds from the Baltimore Criminal Justice System, particularly funding for the SAO which plays such a central role in managing and controlling the misdemeanor case load in the system.

We have a suggestion about a simple metric that the Legislature and the Baltimore System could use to measure whether early disposition is being successfully implemented in Baltimore. We suggest setting a goal of reducing the number of misdemeanor courts in the Circuit Court of Baltimore from three to one-- one with a reasonably manageable docket. Progress toward this goal is measurable, and the indicator of tracking prayers for jury trials, though crude, should be a relatively reliable measure of the success of a variety of efforts to make the District Court more effective at adjudicating minor criminal charges more swiftly, fairly, and with finality.

[43] The purpose of the State's Attorney Office grant is a matter of some doubt. A schedule prepared for the House Appropriations Committee indicates it was designated for information technology ($500,000) and gun prosecutions ($834,000) which the SAO believes is accurate. The other totals on this schedule vary considerably from another document that appears to reflect Board of Public Works decisions in the wake of appropriations activity in early April of 2000. The Board of Public Works document reflects a $1,342,000 grant to the Baltimore SAO to staff the charging function which was recently expanded to have city-wide scope. Both documents appear to have originated in Legislative Services. Whichever document accurately reflects the reality of the Supplemental Budget Process for FY2001, it is clear that the State's Attorney did not receive state funding to staff ED court. It appears that the continuation and enlargement of the FY2001 grant to the SAO in FY2002 was designated for gun and homicide prosecutions. We are not in a position to sort out the considerable confusion about these conflicting records of FY2001 supplemental appropriations activity to fund the Baltimore Criminal Justice System.